D.B. CIVIL SPECIAL APPEAL NO.137/2006

Amravati
Vs.
Kartar Singh & Ors.

Date of Order :: 14-09-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Trilok Joshi, for the appellant.

This appeal is directed against the order of learned Single Judge dated 27.1.2006 dismissing the appeal of the appellant. The appellant had preferred appeal against the award of the claims Tribunal. The Tribunal had awarded compensation of Rs.2,56,000/-. The appellant sought enhancement of the amount.

The case of the appellant is that the deceased was sole proprietor of the spare parts shop having earning Rs.4,000/- per month. In the absence of any evidence on the point, the Tribunal held that he was casual employee in the shop earning Rs.2100/- per month. In support of the appellants' case as aforesaid, counsel relied on the evidence of AW-2 Kunj Bihari as stated in the judgment. From the judgment it appears that in cross-examination Kunj Bihari said about the appellant being proprietor of the shop, nothing had been said in examination-in-chief about his being proprietor or his earning. As a matter of

fact, no documentary evidence whatsoever was produced before the Tribunal that the deceased was proprietor of the shop or his earning was Rs.4,000/-. Even assuming for a moment that he was the proprietor, it does not stand to reason that he would have a fixed income because income depends on the level of sale and there is no evidence on the point. In the absence of any evidence, the order of the Tribunal cannot be said to be erroneous, and therefore, the learned Single Judge did not commit any error in dismissing the appeal.

The appeal stands dismissed.

[MOHAMMAD RAFIQ],J. [S.N.JHA],CJ.

Praveen